

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032

Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

Decision No.: 1388-BH-91
Date: November 6, 1991
Claimant: Salvatore J. Fusco, et. al. Appeal No.: 9102816
S. S. No.:
Employer: Steamship Trade Association L. O. No.: 1
Appellant: CLAIMANT

Issue: Whether certain monies received by the claimants were "wages" within the meaning of Section 8-101(v); whether the claimants are monetarily eligible to receive benefits within the meaning of Section 8-202 of the Labor and Employment Article.

— NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES

December 6, 1991

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER

Claimants:
William Worrell
Nathaniel Weaver
Wesley Thomas
Harold Ockimey
Alton Wright

Gil Abramson, Esq.;
Maurice Byan, Pres.;
Charles Cullen

Salvatore Fusco
James Munford
William Jacobs
Edward Burke, President, Local 333
Cosimo Abate, Esquire

John T. McGucken, Legal Counsel, D.E.E.D.

PRELIMINARY STATEMENT

The question before the Board of Appeals is whether or not payments made to the claimants pursuant to their Collective Bargaining Agreement (hereinafter referred to as the Agreement), from the Guaranteed Annual Income fund (hereinafter referred to as the GAIF) are wages within the meaning of Section 8-101(v) of the Labor and Employment Article.

FINDINGS OF FACT

The claimants are all members of the International Longshoremen's Association (hereinafter referred to as the ILA). The ILA entered into a series of Agreements with the Steamship Trade Association (hereinafter referred to as STA). The Agreements established a fund known as the Guaranteed Annual Income Fund (GAIF). The GAIF was created to subsidize employees, such as the claimants, whose employment opportunities have decreased. However, the claimants have exhausted their benefits under the provisions of the GAIF. Having exhausted these funds, the claimants applied for unemployment insurance benefits.

In order to determine whether or not payments made pursuant to the GAIF are "wages" as defined in Section 8-101(v) of the Labor and Employment Article, we must look at what, if anything, was required of the claimants to receive these benefits.

To receive GAIF benefits, the claimants were required to report to a Central Hiring Hall (hereinafter referred to as the Hall) by 7:30 a.m. At 7:30 a.m., the doors of the Hall were closed and no employees were permitted in. Employees in the Hall were then dispatched to what work was available, based on seniority. Employees that had not been assigned any work for the day were allowed to leave after 8:30 a.m. These employees were then eligible to receive GAIF benefits for that day.

Under the terms of the Agreement, in order to remain eligible for GAIF benefits, employees must actually work 200 hours for one or more of the employers or members of the ILA in the Port

of Baltimore in two out of the three preceding contract years. None of the claimants are eligible to receive GAIF benefits, having failed to meet this requirement.

CONCLUSIONS OF LAW

Section 8-802 of the Labor and Employment Article, requires that a claimant must have been paid wages during the appropriate base period, in order to be monetarily eligible to receive unemployment benefits.

Section 8-101(v)(1) of the Labor and Employment Article defines "wages" as all compensation for personal services.

The facts of this case do not establish that the claimants were paid wages as defined in Section 8-101(v). No services were provided to the STA, other than reporting to the Hall for an hour each day to see if work was available. The claimants were available to perform services for work if there was work available. However, on the days they were not assigned work, they performed no services for the STA. Since the claimants were not performing any service, their GAIF payments are not compensation for services and are not "wages" as defined in Section 8-101(v). Since the GAIF payments are not "wages", the claimants cannot establish monetary eligibility by using the GAIF payments to establish a base period under Section 8-802.

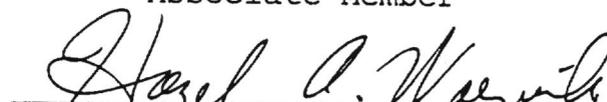
The Board does not have to reach the issue of whether GAIF is paid to "supplement unemployment benefits" within the meaning of Section 8-101(v) (3) (ix), or whether GAIF is considered to be wages within the meaning of any other statutory scheme. The GAIF payments simply do not meet the basic definition of "wages" in Title 8 of the Labor and Employment Article.

DECISION

The claimants lack sufficient covered wages as defined in Section 8-101(v) and are therefore not monetarily eligible for unemployment benefits within the meaning of Section 8-802 of the Labor and Employment Article.



Associate Member



Associate Member



Chairman

Date of Hearing: August 6, 1991

COPIES MAILED TO:

CLAIMANTS (SEE ATTACHED LIST)

EMPLOYER

Cosimo Abate, Esq.
Abate, Rubenstein and Abate, P.A.
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2360 W. Joppa Road
Lutherville, MD 21093

Gil Abramson, Esq.
Hogan & Hartson
Suite 1600
111 South Calvert Street
Baltimore, MD 21202

Horace T. Alston, V.P.
International Longshoremen's Assoc.
Suite 644
10 N. Calvert Street
Baltimore, MD 21202

John T. McGucken, Legal Counsel, D.E.E.D.

UNEMPLOYMENT INSURANCE - BALTIMORE

CLAIMANTS

Salvatore Fusco

Appeal #9102816

Thomas Savage

Appeal #9108171

James Munford

Appeal #9104526

Harold Ockimey

Appeal #9108173

Nathaniel Weaver

Alton Wright

Appeal #9102819

William Worrell

Appeal #9108170

Wesley Thomas

Appeal #9110773

William Jacobs

Appeal #9111178

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5041

— D E C I S I O N —

	Date:	Mailed: 3/21/91
Claimant: Salvatore J. Fusco	Appeal No.:	9102816
	S. S. No.:	
Employer:	L. O. No.:	001
	Appellant:	Claimant

Issue: Whether the claimant is monetarily eligible for benefits within the meaning of Section 3(b)(1) of the Law. Whether the claimant has covered wages within the meaning of Section 20(g) of the Law.

— NOTICE OF RIGHT TO PETITION FOR REVIEW —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE APPEALS DIVISION, ROOM 515, 1100 North EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON **April 5, 1991**

— A P P E A R A N C E S —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Salvatore J. Fusco - Present
Cosimo C. Abate, Esquire
Edward Burke, President
Local #333 International
Longshoremen

FINDINGS OF FACT

The claimant filed a claim for unemployment insurance benefits

effective December 30, 1990. The claimant's base period was determined to be the third and fourth quarters of 1989 and the first and second quarters of 1990. The claimant's base period begins July 1, 1989 through June 30, 1990. The claimant in 1990 worked approximately four to five days. The claimant worked two to three days for Ceres Marine Terminals, Inc. in 1990 as a longshoreman earning \$18.00 per hour. Further in 1990, the claimant worked one day for ITO Steamship Line. The claimant could not recall where he worked in 1989.

The claimant submitted a W2 Wage and Tax Statement for 1990 which indicated that the claimant had wages in the amount of \$26,820.00. The claimant had a guaranteed income totaling 1,600 hours; for the claimant to be entitled to the 1,600 hours at the rate of \$18.00 per hour the claimant would have to report to the Steamship Trade Association Hiring Center at Oldham Street at 7:00 a.m. five days per week. The claimant would have to stay at the hiring center for one and one-half hours.

CONCLUSIONS OF LAW

Section 3(b)(1) of the Maryland Unemployment Insurance Law states that an individual's weekly benefit amount shall be determined by applying the total wages paid him for insured work in the calendar quarters of his base period.

Wages have been defined in the Maryland Unemployment Insurance Law, Section 20(1) of the Law to mean all remuneration for personal services, including commissions, bonuses, tips and the cash value of all compensation and any medium other than cash.

The claimant only worked approximately four days in year 1990; however, the claimant received monies in the amount of \$26,820.00 based upon his W2 Wage and Tax Statement. The \$26,820.00 represents monies from a guaranteed income from a steamship trade as long as the claimant reported to the hiring center Monday through Friday from 7:00 a.m. to 8:30 a.m. The claimant's money received from the guaranteed income from the steamship trade does not constitute wages under Section 20(n) of the Law and does not constitute wages under Section 3(b)(1) of the Law.

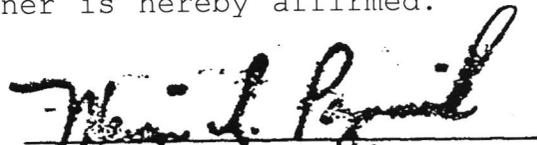
It will be held that the claimant does not have sufficient monetary wages to be eligible for benefits under Section 3(b)(1) and Section 20(n) of the Law.

It will be held that the claimant does not have covered wages within the meaning of Section 20(g) of the Law

DECISION

The claimant is not monetarily eligible for unemployment insurance benefits within the meaning of Section 3(b)(1) and Section 20(n) and 20(g) of the Maryland Unemployment Insurance Law. Benefits are denied from December 30, 1990 and until the claimant becomes monetarily eligible for Maryland Unemployment Insurance Benefits.

The determination of the Claims Examiner is hereby affirmed.


Marvin I. Pazornick
Hearing Examiner

Date of Hearing: March 6, 1991
km/Specialist ID: 01039
Cassette No: 2354a
Copies mailed on March 21, 1991 to:

Claimant
Employer
Unemployment Insurance - Baltimore (MABS)

Abato, Rubenstein and Abato, P.A.
Attorneys At Law
Attn: Cosimo C. Abato
2360 W. Joppa Road, Suite 308
Lutherville, MD 21093

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

— D E C I S I O N —

Claimant:	Thomas G. Savage	Date:	Mailed 6/18/91
		Appeal No.:	9108171
		S. S. No.:	
Employer:		L. O. No.:	01
		Appellant:	Claimant

Issue: Whether the claimant worked in covered employment within the meaning of Section 20 (g) of the Law.

— NOTICE OF RIGHT OF FURTHER APPEAL —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE APPEALS DIVISION, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

July 3, 1991

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON

— A P P E A R A N C E S —

FOR THE CLAIMANT:

Present - represented by H.
Victorian Hedian, Attorney

FOR THE EMPLOYER:

FINDINGS OF FACT

The claimant's benefit year began January 27, 1991. Pursuant to the filing of this claim, he was found to be monetarily eligible for \$69.00 a week, based upon reported earnings in the base period, from October 1, 1989 through September 30, 1990.

The claimant is a longshoreman and a member of the International Longshoreman's Association, Local 1429, and reports to the hiring hall located at 900 Oldham Street, Baltimore, Maryland. From there, he is assigned to various jobs pursuant to a labor agreement between the International Longshoreman Association (ILA) and the Steamship Trade Association (STA). Under said agreement, there is a guaranteed, annual income program which was established for the purpose of aiding senior longshoremen to generate a sufficient annual income. Individuals qualify who have worked a certain number of hours in at least two years prior to eligibility, and who report daily to the hiring hall for assignment there from. Effective January 15, 1991, the claimant is no longer eligible to receive guaranteed annual income payment, pursuant to the new contract entered into between the ILA and the STA in December, 1990.

Under the old guarantee income program, which is pertinent to this case, in order to qualify for payment, the individual longshoreman must meet certain requirements of Registration at the Central Hiring Hall. Specifically, he must be present before 7:30 a.m. to register for work. At 7:30 a.m., the doors of the hall are closed and no employee is thereafter permitted to enter. Those employees in the hiring center before the doors are closed are then subject to registration during the next hour. Individuals are then dispatched to such jobs as are available that day, and at 8:30 a.m., those individuals who have not been dispatched to a job are allowed to leave the central hiring hall, and to receive payment for that day.

The claimant has produced a W-2 form for year ending 1989, which indicates that he was "employed" by the Steamship Trade Association of Baltimore -- Baltimore GAI Fund. For year ending 1989, his annual "wages" from the Steamship Trade Association totaled \$25,367.00. The claimant's W-2 form for year ending 1990 indicates that for the same "employer" the Steamship Trade Association, the claimant's annual "wages" totaled \$28,512.00. The aforesaid income was subject to deduction of taxes.

CONCLUSIONS OF LAW

The central issue to the claimant's eligibility for benefits and his protest to the minimum weekly benefit amount computed herein is whether or not he was employed in what is considered to be covered employment, and received wages in insured work, pursuant to the provisions of Section 20 (g), Section 20 (m) and Section 20 (n) of the Maryland Unemployment Insurance Law, during his base period.

Section 20 (e) of the Maryland Unemployment Insurance Law defines an employing unit as any individual or type of organization which has in its employ one or more individuals performing services for it within the State. All individuals performing services within the State for any employing unit which maintains two or more separate establishments within the State shall be deemed to be employed by a single employing unit for the purposes of" article. "Each individual employed to perform or to assist in performing the work of any agent or employee of any employing unit shall be deemed to be employed by such employing unit for all of the purposes of this article, whether such individual is hired or paid directly by such employing unit or by such agent or employees, provided the employing unit had actual or constructive knowledge of the employment."

Section 20 (g) of the Maryland Unemployment Insurance Law provides that "employment" means service, "including service in interstate commerce, performed for remuneration or under any contract of hire, written or oral, expressed or implied. Section 20 (g)(6) of the Unemployment Insurance Law provides that services performed by an individual for wages or under any contract of hire shall be deemed to be employment subject to this article, irrespective of whether the common law relationship of master and servant exists, unless and until it is shown to be satisfaction of the Secretary that (i) that individual has been and will continue to be free from control or direction over the performance of their services, both under his contract of service and, in fact; and (ii) the services either outside the usual course of the business for which that service is performed, or that the services performed outside all the places of business of the enterprise for which the services performed; and (iii) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service in question."

Section 20 (m) defines "insured work" as meaning employment for employer. Section 20 (n) defines "wages" as remuneration for personal services.

The aforesaid definitions lead to the inescapable conclusion that the claimant received "wages" for "insured work" in covered "employment" for an "employer," under the Maryland Unemployment Insurance Law. Accordingly, any "wages" received by the claimant for personal service to the Steamship Trade Association in his base period from October 1, 1989 through September 30, 1990 shall constitute "wages" for the purposes of Article 95A of the Maryland Unemployment Insurance Law.

DECISION

It is held that the claimant was employed by an employer pursuant to the provisions of Section 20 (g) of the Maryland Unemployment Insurance Law. He received "wages" within the meaning of Section 20 (n) of the Maryland Unemployment Insurance Law in "insured" work as defined by Section 20 (m) of the Law, and was otherwise employed in "covered employment" during the base period commencing October 1, 1989 through September 30, 1990.

The Claims Examiner shall determine and compute the weekly benefit amount based upon high quarter earnings for this claimant in the base period and with respect to the total minimum qualifying wages paid to him during the base period. This includes any "wages" received by the claimant for personal services rendered to the Steamship Trade Association during his base period.

The determination of the Claims Examiner is, hereby, reversed.


Judy-Lynn Goldenberg
Hearing Examiner

Date of Hearing: 6/5/91
cd/Cassette #5496, 5497
Specialist ID: 01039

COPIES MAILED ON 6/18/91 TO:

Claimant
Unemployment Insurance - Baltimore (MABS)

Recoveries - Room 413

H. Victorian Hedian, Attorney

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5046

— D E C I S I O N —

Date:	Mailed: 4/29/91
Claimant: James Munford	Appeal No.: 9104526
	S. S. No.: _____
Employer:	L. O. No.: 1
	Appellant: CLAIMANT

Issue: Whether the claimant worked in covered employment within the meaning of Section 20(g) of the Law.

— NOTICE OF RIGHT OF FURTHER APPEAL —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE APPEALS DIVISION, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE MARYLAND 21201, EITHER IN PERSON OR BY MAIL

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON May 14, 1991

— A P P E A R A N C E S —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant Present
Cosimo Abato - Attorney

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT
James Schuman - Claims Specialist Supvr. II

FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits at Baltimore, effective January 27, 1991.

Pursuant to the filing of that claim, the claimant was found to be monetarily eligible for \$27.00 per week, based upon reported earnings in the base period, being from October 1, 1989 to September 30, 1990.

The claimant is a dock worker and a member of the International Longshoreman's Association, Local 333. The claimant is a party to the labor management agreement between the International Longshoreman's Association and the Steamship Trade Association. Pursuant to the terms of that agreement, certain members of the union who qualify are entitled to guaranteed annual income payments. To qualify, the employee must have worked a qualifying number of hours in at least two years prior to eligibility for such guaranteed payment.

Further, in order to qualify for a payment, the individual longshoreman must meet certain requirements of registration at the central hiring hall. He must be present prior to 7:30 a.m. to register for work. At 7:30 a.m., the doors of the central hiring center are closed and no employee is permitted to enter thereafter. Those employees who are in the central hiring center before the doors are closed, shall register between 7:30 a.m. and 8:00 a.m., but in no event, no later than 8:30 a.m. The individuals are then dispatched to such jobs as there are orders for up to 8:30 a.m., at which time those men who have not been dispatched to a job may leave the central hiring center without being debited for that day.

The object of this agreement is to provide a large labor pool for any available work on the docks as ships arrive. Also, this agreement provides guaranteed income to longshoremen who might otherwise be idle while waiting for assignments or ships to arrive.

In addition to earnings received directly from various steamship lines during the base period, the claimant received wages from the Steamship Trade Association as evidenced by a W-2 for 1989. At this point, the claimant was unable to produce a copy of a W-2 for 1990.

The "wages" paid to individual longshoremen are subject to deduction of taxes and dues checkoff. In turn, the Steamship Trade Association assess all steamship lines doing business in the port of Baltimore a pro rata assessment for monies paid out under the guaranteed annual income program.

Any union member who fails to report approximately 7:00 a.m. and fails to register for work before 8:30 a.m. of any day when such labor pool is organized, that individual does not receive any wages for that day. According to the agreement, employees who quit jobs or who are fired for cause by management lose eligibility for GAI. Employees who are unable to work in all or part of the qualifying years by reason of sickness, injury or disability, or who receive Workmen's Compensation or other disability benefits and whose absence was due to being unable to work, may receive credit toward computation for qualifying hours. No payments are made to members for failure to work because of a strike or work stoppage. Gross earnings received during the guaranteed period shall be deducted from the guaranteed income. In addition, gross payments made to the employee for vacation, holiday and unemployment compensation shall also be deducted. In computing gross earnings, all hours worked shall be computed at applicable straight time rates.

CONCLUSIONS OF LAW

The central issue to the claimant's eligibility for benefits and his protest to the minimum weekly benefit amount computed is whether or not claimant was employed in employment, and received wages in insured work, pursuant to the provisions of Section 20(g), 20(m) and 20(n) of the Maryland Unemployment Insurance Law during his base period.

Section 20(e) of the Unemployment Insurance Law defines an employing unit as any individual or type of organization, which has in its employ one or more individuals performing services for it within this state. All individuals performing services within the state for any employing unit which maintains two or more separate establishments within the state shall be deemed to be employed by a single employing unit for the purposes of this Article. "Each individual employed to perform or to assist in performing the work of any agent or employee of any employing unit shall be deemed to be employed by such employing unit for all the purposes of this Article, whether such individual is hired or paid directly by such employing unit or by such agent or employees, provided the employing unit had actual or constructive knowledge of the employment." Section 20(g) of the Unemployment Insurance Law provides that "employment" means service, including service in interstate commerce, performed for remuneration or under any contract of hire, written or oral, express or implied. Section 20(g)(6) of the Unemployment Insurance Law provides that services performed by an individual for wages or under any

contract of hire shall be deemed to be employment subject to this article, irrespective of whether the common law relationship of master and servant exists, unless and until it is shown to the satisfaction of the secretary that: (i) that individual has been and will continue to be free from control or direction over the performance of their services, both under his contract of service and in fact; and (ii) the service is either outside the usual course of the business for which that service is performed, or that the service is performed outside all the places of business of the enterprise for which the service is performed; and (iii) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service in question."

Section 20(m) defines insured work as meaning employment for employers. Section 20(n) defines "wages" as remuneration for personal services.

Accordingly, I must conclude that pursuant to the provisions of the Unemployment Insurance Law, the claimant was performing personal services for wages under a contract of hire as set forth in Section 20(g)(6) of the Maryland Unemployment Insurance Law, and that the exceptions as set forth in Section 20(g)(6)(i), (ii) and (iii) do not apply. I further conclude that the claimant received "wages" for the personal services rendered for an employer, Steamship Trade Association, by reporting to the central hiring center as part of a labor pool for potential assignment to clockwork on any given day, for which per diem wages were paid to him. I further conclude that the claimant was employed in "insured" work pursuant to the definition of the same in Section 20(m) of the Unemployment Insurance Law, as he was employed by an employer as defined by the Statute.

Accordingly, I conclude that the claimant received "wages" for "insured work" in covered "employment" for an "employer" all as defined and set forth in the Unemployment Insurance Law. Accordingly, any "wages" received by the claimant for personal service to the Steamship Trade Association in his base period from October 1, 1989 to September 30, 1990 shall constitute wages for purposes of Article 95A of the Unemployment Insurance Law.

The Claims Examiner shall determine based upon earnings in this base period the amount of benefits to which the claimant is entitled with respect to his claim entered in February, 1991. It is noted that pursuant to the provisions of Section 8 of the

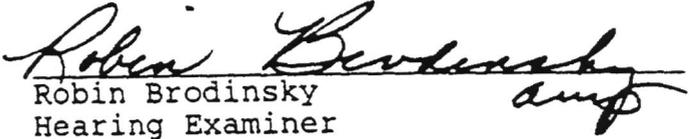
Maryland Unemployment Insurance Law the employer, Steamship Trade Association, may be required to "pay contributions with respect to employment" in accordance with this Article. All employers in the State of Maryland, including tax exempt organizations, are required to make contributions to the unemployment insurance fund for the state of Maryland for services performed in insured work by employees of such organization.

In further determining the claimant's eligibility for benefits, the Claims Examiner should determine whether or not the claimant has been able, available and actively seeking work as required by Section 4(c) of the Maryland Unemployment Insurance Law, particularly in view of the claimant's statement that he is experiencing a pre-existing physical disability. While pre-existing disabilities or injuries do not preclude employees of the Steamship Trade Association to earn credits during the guaranteed annual income program, such factor may be disqualifying under the Unemployment Insurance Law.

DECISION

The claimant was employed by an employer pursuant to the provisions of Section 20(g) of the Maryland Unemployment Insurance Law. He received "wages" within the meaning of Section 20(n) of the Maryland Unemployment Insurance Law in insured work as defined by Section 20(m) of the Unemployment Insurance Law and was otherwise employed in covered employment during the base period commencing October 1, 1989 to September 30, 1990. The Claims Examiner shall determine and compute the weekly benefit amount based upon high quarter earnings for this claimant in the base period and with respect to the total minimum qualifying wages paid to him during the base period.

The determination of the Claims Examiner is reversed.


Robin Brodinsky
Hearing Examiner

Date of Hearing: April 19, 1991
kmb/Specialist ID#01053/4159

Copies mailed on April 29, 1991 to:

Claimant

Cosimo Abato, Esquire
Suite 308
2360 W. Joppa Road
Lutherville, MD 21093-4697

Unemployment Insurance - Baltimore (MABS)



Maryland

Department of Economic & Employment Development

*William Donald Schaefer, Governor
J. Randall Evans, Secretary*

*William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner*

*1100 North Eutaw Street
Baltimore, Maryland 21201*

Telephone: 333-5040

— DECISION —

Date:	Mailed: 4/10/91
Claimant:	Appeal No.: 9102819
Alton L. Wright	S. S. No.:
	L. O. No.: 001
Employer:	Appellant: Claimant

Issue

What is the claimant's correct weekly benefit amount under Section 3(b)(1) of the Law.

— NOTICE OF RIGHT TO PETITION FOR REVIEW —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE APPEALS DIVISION, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON

April 25, 1991

— APPEARANCES —

FOR THE CLAIMANT:

Claimant - Present
Cosino C. Abato
Ed Burke,
President of Local 333 ILA

FOR THE EMPLOYER:

other: Crystal Gaines,
Claims Specialist 11

FINDINGS OF FACT

The record shows that the Steam Ship Trade Association of Baltimore (STA) paid the claimant \$20,559 and claimed that they

were wages which should be considered as covered wages for the purpose of determining monetary eligibility for unemployment benefits. The local office refused to consider this income in determining monetary eligibility under Section 3(b)(1) of the unemployment insurance Law.

The record further shows that the Steamship Trade Association is an association made up of fifteen employers. These employers pay \$3.75 per man hour into a fund from which the claimant and other employees are paid pursuant a contract with the Steamship Trade Line. The purpose of this guaranteed annually income is to maintain a minimal income level of steamship line workers during slow periods. The employees are guaranteed at least forty-four hours equivalent income every two weeks. If work is available and the employer works twenty hours, then this amount is subtracted from the guaranteed forty-four hours and the guaranteed annually income fund pays twenty-four hours.

Each employee is required to report to the union on a daily basis to see if work is available. He is eligible for the benefits from the guaranteed annual income fund if he meets this requirement. There are not other services to be performed for the monies received.

CONCLUSIONS OF LAW

The payment to the claimant in this case are paid under a plan pursuant to a contract between the Steamship Trade Lines and the Steamship Trade Association for the benefit of the respective employees of the steamship line. Article 94A, Section 20(g) states as follows (employment means service, including service in interstate commerce performed for remuneration or any contract of hire, written or oral expressed or implied. The term (wages) is defined as remuneration for personal services, including commissions, bonuses, tips and the cash value of compensation in any medium other than cash. Further, the Steamship Trade Association, is not an employer or an employing unit as defined by Section 20(g) of the Maryland Unemployment Insurance Law.

Based upon the foregoing, it is determined that the payments received by the claimant are not covered wages, within the meaning of the Law. Therefore, the claimant has not been paid the qualifying amount of wages as required under Section 4(d) and is consequently not eligible for benefits under Section 3(b) of the Law.

The determination of the Claims Examiner will be affirmed.

DECISION

The claimant was not paid the qualifying amount of wages pursuant to Sections 4(d) and is therefore not eligible for benefits under Sections 3(b) of the Law. Benefits are denied for the week beginning December 30, 1990 until meeting the requirements of the Law.

The determination of the Claims Examiner is affirmed.


Mary Welcome
Hearing Examiner

Date of Hearing: 3/6/91
ps/Specialist ID: 01039
Cassette No: 2621
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Claimant
Employer
Unemployment Insurance - Baltimore (MABS)

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

— DECISION —

Claimant:	William H. Worrell	Date:	Mailed 6/18/91
		Appeal No.:	9108170
		S. S. No.:	
Employer:		L. O. No.:	01
		Appellant:	Claimant

Issue: Whether the claimant worked in covered employment within the meaning of Section 20 (g) of the Law.

— NOTICE OF RIGHT OF FURTHER APPEAL —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE APPEALS DIVISION, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

July 3, 1991

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

Present - represented by H.
Victorian Hedian, Attorney

FOR THE EMPLOYER:

FINDINGS OF FACT

The claimant's benefit year began January 27, 1991. Pursuant to the filing of this claim, his weekly benefit amount calculated by the local office is unknown, because records in the file were incomplete.

The claimant is a longshoreman and a member of the International Longshoreman's Association, Local 1429, and reports to the hiring hall located at 900 Oldham Street, Baltimore, Maryland. From there, he is assigned to various jobs pursuant to a labor agreement between the International Longshoreman Association (ILA) and the Steamship Trade Association (STA). Under said agreement, there is a guaranteed, annual income program which was established for the purpose of aiding senior longshoremen to generate a sufficient annual income. Individuals qualify who have worked a certain number of hours in at least two years prior to eligibility, and who report daily to the hiring hall for assignment there from. Effective January 15, 1991, the claimant is no longer eligible to receive guaranteed annual income payment, pursuant to the new contract entered into between the ILA and the STA in December, 1990.

Under the old guarantee income program, which is pertinent to this case, in order to qualify for payment, the individual longshoreman must meet certain requirements of Registration at the Central Hiring Hall. Specifically, he must be present before 7:30 a.m. to register for work. At 7:30 a.m., the doors of the hall are closed and no employee is thereafter permitted to enter. Those employees in the hiring center before the doors are closed are then subject to registration during the next hour. Individuals are then dispatched to such jobs as are available that day, and at 8:30 a.m., those individuals who have not been dispatched to a job are allowed to leave the central hiring hall, and to receive payment for that day.

The claimant has produced a W-2 form for year ending 1989, which indicates that he was "employed" by the Steamship Trade Association of Baltimore -- Baltimore GAI Fund. For year ending 1989, his annual "wages" from the Steamship Trade Association totaled \$27,162.00. The claimant's W-2 form for year ending 1990 indicates that for the same "employer" the Steamship Trade Association, the claimant's annual "wages" totaled \$27,486.00. The aforesaid income was subject to deduction of taxes.

CONCLUSIONS OF LAW

The central issue to the claimant's eligibility for benefits and his protest to the minimum weekly benefit amount computed herein is whether or not he was employed in what is considered to be covered employment, and received wages in insured work, pursuant to the provisions of Section 20 (g), Section 20 (m) and Section 20 (n) of the Maryland Unemployment Insurance Law, during his base period.

Section 20 (e) of the Maryland Unemployment Insurance Law defines an employing unit as any individual or type of organization which has in its employ one or more individuals performing services for it within the State. All individuals performing services within the State for any employing unit which maintains two or more separate establishments within the State shall be deemed to be employed by a single employing unit for the purposes of this article. "Each individual employed to perform or to assist in performing the work of any agent or employee of any employing unit shall be deemed to be employed by such employing unit for all of the purposes of this article, whether such individual is hired or paid directly by such employing unit or by such agent or employees, provided the employing unit had actual or constructive knowledge of the employment."

Section 20 (g) of the Maryland Unemployment Insurance Law provides that "employment" means service, "including service in interstate commerce, performed for remuneration or under any contract of hire, written or oral, expressed or implied. Section 20 (g)(6) of the Unemployment Insurance Law provides that services performed by an individual for wages or under any contract of hire shall be deemed to be employment subject to this article, irrespective of whether the common law relationship of master and servant exists, unless and until it is shown to be satisfaction of the Secretary that (i) that individual has been and will continue to be free from control or direction over the performance of their services, both under his contract of service and, in fact; and (ii) the services either outside the usual course of the business for which that service is performed, or that the services performed outside all the places of business of the enterprise for which the services performed; and (iii) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service in question."

Section 20 (m) defines "insured work" as meaning employment for employer. Section 20 (n) defines "wages" as remuneration for personal services.

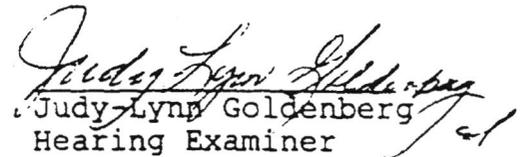
The aforesaid definitions lead to the inescapable conclusion that the claimant received "wages" for "insured work" in covered "employment" for an "employer," under the Maryland Unemployment Insurance Law. Accordingly, any "wages" received by the claimant for personal service to the Steamship Trade Association in his base period from October 1, 1989 through September 30, 1990 shall constitute "wages" for the purposes of Article 95A of the Maryland Unemployment Insurance Law.

DECISION

It is held that the claimant was employed by an employer pursuant to the provisions of Section 20 (g) of the Maryland Unemployment Insurance Law. He received "wages" within the meaning of Section 20 (n) of the Maryland Unemployment Insurance Law in "insured" work as defined by Section 20 (m) of the Law, and was otherwise employed in "covered employment" during the base period commencing October 1, 1989 through September 30, 1990.

The Claims Examiner shall determine and compute the weekly benefit amount based upon high quarter earnings for this claimant in the base period and with respect to the total minimum qualifying wages paid to him during the base period. This includes any "wages" received by the claimant for personal services rendered to the Steamship Trade Association during his base period.

The determination of the Claims Examiner is, hereby, reversed.


Judy Lynn Goldenberg
Hearing Examiner

Date of Hearing: 6/5/91
cd/Cassette #5496, 5497
Specialist ID: 01039

COPIES MAILED ON 6/18/91 TO:

Claimant
Unemployment Insurance - Baltimore (MABS)

H. Victorian Hedian, Attorney

 **Maryland**
Department of Economic &
Employment Development

William Donald Schafer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

— D E C I S I O N —

Claimant:	Nathaniel T. Weaver	Date:	Mailed:	06/12/91
		Appeal No.:	9103701	
		S. S. No.:		
Employer:		L. O. No.:	01	
		Appellant:	Claimant	

Issue: Whether the claimant is receiving holiday or vacation pay which is disqualifying under Section 6(i) of the Law.

— NOTICE OF RIGHT TO PETITION FOR REVIEW —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE APPEALS DIVISION, ROOM 515 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON

June 27, 1991

— A P P E A R A N C E S —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant - Present;
Cosimo C. Abato, Esq.

FINDINGS OF FACT

The claimant applied for unemployment benefits, and established non-monetary eligibility for the year beginning January 6, 1991. A weekly benefit amount was not determined because the claimant did not earn sufficient wages, as required by Law.

The record shows that the claimant is a longshoreman and is a member of the International Longshoremen's Association, AFL-CIO. The Steamship Trade Association of Baltimore is an organization comprised of employers engaging in the steamship trade. The members contribute to a fund which is known as the Guaranteed Annual Income Fund, and through a negotiated agreement between the Steamship Trade Association and the International Longshoremen's Association, employees receive a certain amount of money when they do not work. The claimant was eligible to receive up to sixteen hundred hours at an hourly rate of \$18 per hour. In order to qualify for this guaranteed annual income, the claimant is required to report to the central hiring hall at 7:00 a.m. five days per week and remain there for one-and-a-half hours. If work is available, the claimant would be assigned, and he would, therefore, not receive monies from the Guaranteed Annual Income Fund. If, on the other hand, work was not available, he was permitted to leave after one-and-a-half hours and receive the \$18 per hour, for not working.

The claimant submitted W-2 Wage and Tax statements for the year 1989 and 1990. The income, however, included monies from the Guaranteed Income Fund totaling sixteen hundred hours, at the rate of \$18 per hour.

CONCLUSIONS OF LAW

The Maryland Unemployment Insurance Law, Section 21(1) defines wages as "all remuneration for personal services, including commissions, bonuses, tips and the cash value of all compensation and any other medium other than cash." Section 3(b)(1) of the Maryland Unemployment Insurance Law provides that a claimant's weekly benefit amount shall be determined by applying the total wages received for covered work in the calendar quarters of his base period.

The monies the claimant received, as indicated on his W-2 Wage and Tax statement, were received from the Guaranteed Annual Income Fund made up of the Steamship Trade members. As the claimant testified, he reported at the hiring hall at 7:00 a.m. and waited until 8:30 a.m. to see if work was available. When no work was available, he was permitted to leave and was thereby eligible to receive monies from the fund.

The monies received by the claimant were not for rendering personal services, but just the opposite, for not rendering services. He was paid when work was not available, and not for work provided.

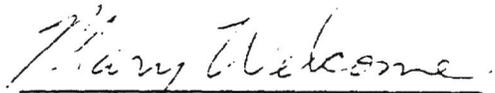
The claimant did not have sufficient wages to be eligible for benefits, as provided by Section 3(b)(1) and Section 20(n) of the Law. In addition, the claimant does not have covered wages as

required by Section 20(g) of the Law.

DECISION

The claimant is not monetarily eligible for unemployment insurance benefits, within the meaning of Section 3(b)(1) and Section 20(n) and 20(g) of the Maryland Unemployment Insurance Law. Therefore, benefits are denied from January 6, 1991 until the claimant meets the requirements of the Law.

The determination of the Claims Examiner is affirmed.



Mary Welcome
Hearing Examiner

Date of Hearing: 04/24/91
alma/Specialist ID: 01039
Cassette No.: 4562
Copies mailed on 06/12/91 to:

Claimant
Employer
Unemployment Insurance - Baltimore (MABS)

Abato, Rubenstein and Abato, P.A.